IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

1. **CRIMINAL APPEAL NO. 437-DB OF 2000**

Milakh Raj, Lal Chand and Labh Chand ……APPELLANTS

Versus

State of Haryana ……RESPONDENT

2. **CRIMINAL APPEAL NO. 352-DBA OF 2001**

State of Haryana ……APPELLANT

Versus

Milakh Raj and Labh Chand ……RESPONDENTS

3. **CRIMINAL REVISION NO. 222 OF 2001**

Har Bhagwan Singh ……PETITIONER

Versus

State of Haryana and Lal Chand ……RESPONDENTS

CORAM **HON'BLE MR. JUSTICE MEHTAB S.GILL**
HON'BLE MR. JUSTICE RAM CHAND GUPTA

Present:- Mr. N. K. Sanghi, Advocate
with Mr. Munish Garg, Advocate,
Mr. Aditya Sanghi, Advocate and
Mr. Aditya Pal Singh, Advocate
for the appellants.
Mr. Vinod Ghai, Advocate
Mr. S. S. Randhawa, Additional Advocate General, Haryana.

MEHTAB S.GILL, J

We will be deciding Crl. A. No.437-DB of 2000, Crl. A. No. 352-DBA of 2001 and Crl. Revision No.222 of 2001 by a common judgment/order as they arise out of the judgment/order passed by the Ld. Sessions Judge, Sirsa, dated 21.8.2000/24.8.2000.

Learned Sessions Judge, convicted Milakh Raj son of Lal Chand and Labh Chand @ Rodi son of Lal Chand to undergo imprisonment for life and to pay a fine of Rs.5,000/- each for the offence under Section 302/34 IPC, in default of payment of fine to further undergo rigorous imprisonment for a period of three months. Lal Chand son of Sona Ram was convicted and sentenced to undergo five years rigorous imprisonment and to pay a fine of Rs.3,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of two months under Section 307 IPC. Dharmo Bai wife of Lal Chand was convicted and sentenced to simple imprisonment for one year (already undergone) for the offence under Section 323 IPC.

The case of the prosecution is unfolded by the statement of Har Bhagwan given to SI Janardan in Govt. Hospital, Sirsa.

Har Bhagwan stated, that the house of his uncle Lal Chand son of Sona Ram is adjacent to his house. There is a vacant plot in front of his house. His uncle Lal Chand has sown potato crops in the land. On 18.12.1998 at 1:30 am, his uncle Lal Chand and his wife Dharmo Bai were installing wire on their land. Har Bhagwan's mother Narain Bai, brother Satnam Chand and his wife Sunita Bai were standing in front of the house. Har Bhagwan was working in the field nearby. When Har Bhagwan's

mother and Satnam Chand asked Lal Chand not to instal the wire, hot words were exchanged. On hearing the alarm, Milakh Raj son of Lal Chand armed with gandhala and Labh Chand @ Rodi armed with kappa came there. Lal Chand hit a kasia blow from the sharp side on the head of Har Bhagwan's mother. Second Kasia blow on the chin of his mother. Darmo Bai gave a lathi blow on the cheek of his mother, on the left side. When his brother Satnam Chand tried to rescue his mother, Milakh Raj gave an injury with his gandhala on the left side of the head of Satnam Chand, Labh Chand @ Rodi gave injuries with his kappa on the back side of the head, neck and right lips of Satnam Chand. Har Bhagwan's brother's wife Sunita came forward, then Dharmo Bai gave her injuries with lathi on her head, back and both hands. Har Bhagwan and his wife Reshma then went to rescue his mother and sister. All the appellants thereafter ran away. Appellants had also dragged his mother.

On the basis of this statement, FIR Ex.PQ was recorded on 18.12.1998 at 9:40 pm and the special report reached the Judicial Magistrate Ist Classl, Sirsa on 19.12.1998 at 12:05 am.

The prosecution to prove its case, brought into the witness box Dr. S. L. Aggarwal PW1, Dr. Viresh Bhushan PW2, Dr. G. S.Somani PW3, HC Rajbir Singh PW4, Amar Singh PW5, HC Amar Nath PW6, C Om Parkash PW7, C Rajbir Singh PW8, C Vinod Kumar PW9, Har Bhagwan PW10, Sunita PW11, HC Sombir Singh PW12, Dr.V. K. Gupta PW13, Dr. Baldev Singh PW14 and SI Janardhan PW15.

To understand the relationship, following is the table:-

Sona Ram
|
|

(having two sons)

Son	Son
Sanja Ram	Lal Chand -------- all accused
1. Wife- Naraini Bai, injured, not examined	1. wife- Dharmo Bai 2.Son-Milakh Raj 3. Son-LabhChand
2. Son-Har Bhagwan(PW10) 3. Son-Satnam Chand (Deceased) 4. Wife of Satnam Chand Sunita (PW11)	

We have heard learned counsel for the parties and perused the record with their assistance.

Dr. Vinesh Bhushan PW2 prepared the MLR reports of Naraini Bai Ex. PD, Sunita PW11 Ex. PE and appellant Lal Chand and Dharmo Bai. There are two injuries on the person of appellant Lal Chand both being fractures on the head. Appellant Dharmo Bai has also received an injury on the head. These injuries have not been explained in FIR Ex. PQ. These injuries go unexplained by the prosecution though Dr. Vinesh Bhushan PW2 has stated, that both appellants Lal Chand and Dharmo Bai reached the hospital at 3 pm. Thereafter, the complainant party reached the hospital at 3:40 pm. The Investigating Officer SI Janardhan PW15 was aware of the presence of both appellants Lal Chand and Dharmo Bai in the hospital but he did not record their statement nor did he go any further to find out as to how they had received the injuries on the head.

Appellant Lal Chand has taken a specific stand in his statement under Section 313 Cr. P. C. He has stated as under:-

> "I am innocent. On the day of occurrence, I alongwith my wife Dharmo Bai was present in our potato field and we were

> putting barbed wire on our side. Satnam Chand and Narain Bai objected to it. We reiterated that as we were putting the barbed wire in our side of the field, they had no right to object. On this, Satnam Chand and Narain Bai brought gandasas from their house and caused injuries to me while I was sitting on the ground in our field. I was chased by Satnam Chand and Narain Bai, who caused injuries to me. I, in my self defence and in order to save myself, caused some injuries to Satnam Chand and Narain Bai. When my wife Dharmo Bai tried to interfere physically to save me, she was given lathi blow by Sunita. My wife also gave a blow of wooden pillar, which we were erecting, to Sunita in her self defence. The occurrence took place in our potato field, as stated above, and the complainant party was at fault. Har Bhagwan PW was not present at that time. We the whole family, I have been involved in this case after fabricating the false FIR in conspiracy with the Police Officers and they have falsely challaned us. I received grievous injuries on the head, but the police did not take any action due to their connivance with the complainant party. The alleged recoveries were foisted upon us only to make the case strong in the Court. ”

It has come in evidence of Sunita PW11 that pillars had been erected on the piece of land where the wires were being put. Learned counsel for the appellants has rightly argued that if the fight had taken place at the time when the pillars were being put, appellants would have been then at fault. But at that time, the complainant party did not object to. Putting up these pillars must have taken a lot of time. It was at the time when the wires were being put, that objection came from the side of complainant party.

If we go through the site plan Ex. PY, it is clear, that the body of the deceased was well within the land which was in possession of

appellant Lal Chand. It seems that deceased Satnam Chand alongwith his wife Sunita PW11 entered the portion of land which was in physical possession of appellant Lal Chand and it is thereafter that the quarrel erupted.

Learned counsel for the State has argued that deceased Satnam Chand was dragged from point H to point C. This does not seem to be so. Dr.G.S.Sumani PW3, who conducted the post mortem, prepared report Ex. PG shows no dark marks on the person of deceased Satnam Chand. If he had been dragged, there would have been scratch marks or bruises on his body as the land over which he has been dragged was cultivated land, having a rough surface.

Har Bhagwan PW10, brother of the deceased, on the fateful day was present in the fields. He was running a shop of pesticide at Sirsa. Occurrence had taken place at 1;30 pm. He had gone to see his piece of land. He is a natural witness to the occurrence. Though he has suppressed this from the Court that it is deceased Satnam Chand who entered the land of the appellants.

The other eye witness to the occurrence Sunita PW11 is the widow of the deceased. She was injured in the occurrence. Both deceased Satnam Chand and Sunita PW11 opened the attack on Lal Chand and Dharmo Bai and it is thereafter appellants inflicted injuries on the person of Satnam Chand.

Taking the nature and number of injuries on the person of Satnam Chand, it is clear that appellants exceeded the right of private defence to person and property. Appellants were four in number while Satnam Chand and Sunita PW11 were just two. Appellants could have

easily pushed Satnam Chand and Sunita PW11 away.

From the above discussion and observation, we find it a fit case to convict Milakh Raj son of Lal Chand and Labh Chand son of Lal Chand under Section 304-I IPC and sentence them to undergo six years rigorous imprisonment. Lal Chand son of Sona Ram is sentenced to undergo 2 years rigorous imprisonment. We will not interfere in the sentence of appellant Dharmo Bai as she was convicted under Section 323 IPC and has already undergone her sentence.

With above modification in the conviction and sentence, appeal is dismissed.

(MEHTAB S. GILL)
JUDGE

08.12.2009 **(RAM CHAND GUPTA)**
mamta **JUDGE**

WHETHER TO BE REFERRED TO REPORTER? YES/NO